IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT

JODHPUR

ORDER.

Ganga Ram Suyal vs. The State of Rajasthan & ors.

S.B. Civil Writ Petition No.4407/2004
under Article 226 of the Constitution of India.

Date of Order: March 11th, 2005.

PRESENT

HON'BLE MR. PRAKASH TATIA,J.

Mr. M.S. Singhvi, for the petitioner.
Mr. Shyam Ladrecha, Addl. Govt. Advocate.

BY THE COURT:

Heard learned counsel for the parties.

2. The petitioner is running industrial unit and manufacturing petrochemicals. For that purpose, the petitioner obtained licence for manufacturing, trading and consumption of solvent, raffinate and slop under the provisions of clause 3 of the Solvent, Raffinate and Slop (Acquisition, Sale, Storage and Prevention of Use in Automobiles) Order, 2000. The licence has been granted on 24.4.2003 and after renewal, it is

valid upto 23.4.2006. The copy of the licence is placed on record as Annexture-1.

3. The petitioner also obtained another licence under the Neptha (Acquisition, Sale, Storage and Prevention of Use in Automobiles) Order, 2000. This licence was also valid upto 23.4.2004 and after renewal, it is valid upto 23.4.2006.

4. The petitioner also obtained licence from Chief Controller of Explosives on 26.2.2003, which also after renewal, is valid upto 31.12.2005. As per the terms and conditions of the licence, the petitioner was under obligation to submit certain returns and documents before the competent authorities, time to time.

5. Two F.I.R. Nos. 205/2004 and 209/2004 were registered on 28.8.2004 and 24.8.2004 respectively. The F.I.R. No.205/2004 was registered under Section 3/7 of the Essential Commodities Act on the ground that one tanker carrying 4000 litres of the product manufactured by the petitioner was seized by the police, whereas F.I.R. No.209/2004 was filed against one Ranjeet Singh for keeping solvent measuring 363 litres but without having any licence. In the F.I.R. No.205/2004, the petitioner applied for grant of anticipatory bail whereas, Ranjeet Singh

applied for bail under Section 437, Cr.P.C. and both were granted bail. The petitioner finding himself implicated in criminal case(F.I.R. No.209/2004), also submitted anticipatory bail application, that too was allowed and the petitioner was released on anticipatory bail. The allegations in substance are that the petitioner who obtained the licence for solvent and Neptha under the Orders, 2000 referred above, was found indulged in illegal trade of the items which have been meant for the own consumption of the petitioner's unit and thereby the petitioner has committed offence under Section 3/7 of the Essential Commodities Act. According to the petitioner, the police authorities with ill-intention started harassing the petitioner so that the petitioner may not carry on his business. It is also alleged that for the said purpose, inspection and search was conducted by the Central Excise Authorities on the petitioner's premises and in that process, the Central Excise Authorities seized the books of accounts of the petitioner's unit. For the same purpose, two notices have been issued by the District Supply Officer, Udaipur to the petitioner which are dated 22.9.2004, copies of which are placed on record as Annexture-10 and 11 calling upon the petitioner to show cause for the allegations against the petitioner that he did not submit the list of those consumers to whom the petitioner sold the product and the petitioner also did not submit the quarterly returns etc. The petitioner submitted reply to the show

cause notices and copy of which is placed on record as Annexture-12. According to the petitioner, the notices have been issued on 22.9.2004 directing the petitioner to submit reply within three days. The D.S.O. on 27.9.2004 passed the impugned orders Annextures-13 and 14 and stopped the business of petitioner's unit under both the licenses by two separate orders.

6. The petitioner, therefore, preferred this writ petition to challenge the order dated 27.9.204. According to the learned counsel for the petitioner, the action of the D.S.O. (respondent no.4) is colourable exercise of power only which is clear from the facts that the petitioner submitted returns in time and for which due receipt was given by the D.S.O. himself to the petitioner and despite this fact, the D.S.O., after registration of the F.I.Rs., issued two show causes notices on the ground that the returns were not submitted by the petitioner. It is also submitted that by notices Annexture-10 and 11, the D.S.O. demanded the list of those persons to whom the petitioner supplied the manufactured goods, for which the D.S.O. had no authority. It is also submitted that the respondents have no right under the Orders of 2000 (referred above) or under the conditions to cancel the licence or stop the business of the petitioner on any ground. It is also submitted that this Court held in the judgment of M/s Pali Filling Station vs. State of

Rajasthan & ors. (AIR 1993 Raj. 138) that mere on the basis of lodging F.I.R., no order to cancel licence can be passed nor business can be stopped. It is also submitted that the procedure has been prescribed under the Orders of 2000 itself and in view of sub-section (3) of Section 7 of the Essential Commodities Act, only the court can, on second conviction, pass the order for stopping the business of the licence holder and, therefore, also the D.S.O. had no jurisdiction to pass the order of stopping the business of the petitioner under the licence nor he had any authority to pass any stay order against the selling of the stock by the petitioner. The learned counsel for the petitioner further submits that the very initiation of the proceedings by the D.S.O. by issuing notices dated 22.9.2004 (Annexture-10 and 11) itself is without jurisdiction and, therefore, the notices be quashed.

7. The respondents submitted reply and raised preliminary objection about the maintainability of the writ petition. According to the respondents, the petitioner is not only manufacturer of the petrochemicals but he obtained licence for trading also which is clear from the admission made by the petitioner himself in para no.3 of the writ petition. The respondents also submitted that even from the returns placed on record by the petitioner as annextures, also it is clear that the petitioner is involved in the sale as contemplated under the

Solvent Order, 2000. The respondents also submitted that the writ petitioner of the petitioner deserves to be dismissed on the count that the petitioner was found indulged in the sale of solvent by mixing them with petroleum product which is totally impermissible under the Solvent and Naptha Orders 2000. The witnesses also deposed that the petitioner was indulged in the sale of the solvent by mixing them with petroleum product. It is also submitted that the petitioner cannot be permitted to sell stock lying with him till the enquiry is completed because it may result into selling hazardous articles which may affect the human life also. The respondents also submitted the facts relating to the criminal cases registered in pursuance of the F.I.Rs. referred above to show that prima facie there are proof of petitioner's involvement in the illegal trade of the commodity for which he obtained the licence.

8. So far as jurisdiction of the D.S.O. for passing the impugned orders is concerned, the respondents relied upon clause 6 of both the Orders of 2000, which is as under:-

> "The Central Government or a State Government with the approval of the Central Govt. May, from time to time, by a general or special order issue to any person such directions as it considers necessary regarding storage, sale, transportation and disposal and use of product and upon the issue of such directions, such person shall be bound to comply there with."

9. According to the learned counsel for the respondents, the necessary directions can be issued by the competent authority under clause 6 in relation to the storage, sale, transportation and disposal of the product and otherwise also the D.S.O. has been empowered to grant licence and, therefore, he has power to check the breach of conditions of the licence and in exercise of that power also, the D.S.O. was competent to pass the interim order till the enquiry is completed.

10. I considered the submissions of the learned counsel for the parties.

11. So far as the preliminary objections are concerned, I do not find any force in the objections raised by the learned counsel for the respondents, in view of the fact that the allegation against the petitioner is that the petitioner was found indulged in the illegal trade of controlled commodity and, according to the respondents, by this, he breached the conditions of the licence and the F.I.Rs. have been lodged involving the petitioner but all these are only allegations and the matter is under investigation before the police agencies as well as before the D.S.O. Mere allegations against the petitioner, cannot deprive the petitioner to show that the action initiated against the petitioner itself is a result of colourable exercise of power or the action initiated against

the petitioner is wholly without jurisdiction. The allegation of the petitioner is that the initiation of the proceedings by the D.S.O. by issuing notices Annextures-10 and 11 itself is wholly without jurisdiction as the D.S.O. has not been given any power to initiate any action either for stopping the business of the petitioner under the licence or to cancel the licence itself. Such power is not available to the D.S.O., either under the Act or under the terms of the licence.

12. From bare perusal of the licenses Annextuare-1 and 3, it is clear that under any of the conditions of the licence, no power has been given to the D.S.O. to cancel the licence or suspend the business of the petitioner finally or provisionally. Clause 6 of the Order of 2000 quoted above, also provides only that the Central Government or the State Government, with the approval of the Central Government, may issue directions to any person regarding storage, sale, transportation and disposal and use of the produce, but here in this case, no document has been placed on record to show that any such order has been passed either by the Central Government or by the State Government with approval of the Central Government in the case of the petitioner. It appears from the Solvent and Naptha Orders, 2000 that in these orders also there is no provision for passing any order of cancellation of the licence and for passing the interim order during the pendency of the

enquiry.

13. Inspite of the above position that the D.S.O. has no authority to cancel the licence or pass any order to suspend the business of the petitioner in terms of the said licence, there appears to be no bar for D.S.O.'s holding inquiry about allegation of misuse of benefit of licence and breach of terms of the licence. So far as the contention of the learned counsel for the petitioner that the D.S.O. had no authority to issue notices Annexture-10 and 11 or the notices have been issued to the petitioner with extraneous consideration, I do not find any force and I also do not find any force in the submission of the learned counsel for the petitioner that there is no mention of any power to cancel the licence in the Orders of 2000 or in the licence, therefore, the granter has no power to inquire into the matter whether the licensee has breached the condition of licence or is indulged in mis-using the benefit which he availed under the licence with clear undertaking that the product will be used for a particular purpose. That may be treated to be an implied condition of licence and the granter has implied condition to see that the licensee obeys the conditions of the licence and in case the licensee found indulged in violating the terms and conditions of the licence then the matter can be inquired into by the granter and for that purpose, to follow the principles of natural justice, the notices can be

issued to the licensee so that he may explain that he has not committed the breach of the conditions of the licence or has not mis-used the licence. Obtaining the licence itself is a consent of the licensee to the licensor and gives a right to the licensor to check the licensee from violating the conditions of the licenses in accordance with law. Where scope of the licence has not been defined in the statute itself, then the help of general law can be taken and it can be presumed that when there is licence, which is always revocable unless a right accrues to the licensee against the revocation of the licence because of the well known principles of making the licence irrevocable. The breach of conditions of the licence may be a ground for revocation of the licence and that right is available to the granter.

14. In view of the above, the licensing authority, if merely initiated proceedings to inquire about the conduct of the petitioner so far as his activities under the licence are concerned, they in their opinion had full reasons to demand the information from the the licensee and while doing so if some information and explanation has been sought from the licensee, then it cannot be presumed that the initiation of the proceedings itself is without jurisdiction or illegal. It is the action which may be taken on the basis of such inquiry, may be challenged but in the facts of this case mere demanding some documents by the D.S.O., it

cannot be said to be wholly without authority.

15. In view of the above discussion, the issuance of the notices Annexture-10 and 11 is only for the purpose of obtaining information from the petitioner so that the authorities may initiate appropriate action in accordance with law and the notices also contain specific information to the petitioner that after obtaining the explanation from the petitioner, the respondents may initiate the proceedings in accordance with law. If the petitioner feels that he has all material to show that he furnished the information as required by Annextures-10 and 11, he should have furnished those informations to the authorities concerned. Assuming for the sake of argument that the D.S.O., Udaipur could not have cancelled the licence or there is no specific clause in the agreement and in the relevant provisions of rules, still unless and until the respondents decide to proceed in the matter, this Court cannot presume that the respondents will proceed in the matter in violation to any statutory rule or condition of licence or will take action without any authority of law even after hearing the petitioner.

16. So far as the order dated 27.9.2004, staying the business of the petitioner is concerned, in relation to the balance stock or future business is concerned, they are clearly issued without any authority of

law because of the simple reason that the respondents failed to show any provision of law or condition of licence empowering the D.S.O. to pass any order. So far as his inquiry in the allegation for taking action is not an action against the petitioner but preventing the petitioner from doing business is an actionable cause for which only authority who has power can pass the order and not by the D.S.O. In addition to above, mere lodging F.I.Rs. of commission of offence itself cannot be a ground in background for passing the impugned orders. The petitioner placed on record the documents showing that he has submitted relevant documents earlier well in time periodically, therefore, also the reason given in the order dated 27.9.2004 appears to be wrong and hence the entire order proceeded on wrong assumption of fact. Therefore, the order dated 27.9.2004 relating to staying the business of the petitioner deserves to be quashed and set aside and hence quashed and set aside.

17. In view of the above discussion, the writ petition is partly allowed.

(PRAKASH TATIA),J.

mlt.